IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4813 OF 2003

The Commercial Co-operative Bank Ltd. & Anr. ... Petitioners

V/s.

M/s.Deepak Kumar & Co. & Ors. ...Respondents

Ms.Gauri Godse for Petitioners.
Mrs.Deepa Ahuja i/b V.B. Naik for Respondent No.1.
Ms.Sharvan Shailendra i/b. Ms. P.S. Dani for Respondent No.2

CORAM : V.M. KANADE, J.
DATED : 13th MARCH, 2007.

P.C. :-

1. Heard learned counsel for the Petitioners and the learned counsel for the Respondents.

2. The Petitioners take exception to the order passed by the 2nd Joint Civil Judge,(S.D.), Kolhapur in application filed by defendant No.1 and 2 for deciding question of maintainability of suit as preliminary issues and this application was rejected by the learned Judge.

3. Respondent No.1 filed suit before Civil Judge (S.D.) Kolhapur against the Petitioners for recovery of Rs.3,11,000/-. It was contended that he was given overdraft facility by the Petitioner-Bank and it was

cleared by the Petitioner-Bank for an amount of Rs.2,50,000/-without verifying his signature.

4. In this suit, Petitioners filed an application for framing preliminary issues regarding jurisdiction of Civil Court to decide the suit in view of provisions of Section 91 of C.P.C. Initially preliminary issues were framed by the Court. However, Respondent No.1 filed application for setting aside framing preliminary issues and the said application was allowed. Thereafter another application was filed by the Petitioners for framing preliminary issues in respect of jurisdiction of the Court after written statement was filed by the defendants. This application was rejected by the Trial Court.

5. It is submitted by the learned counsel for the Petitioners that in view of the provisions of Section 91 of C.P.C., Civil Judge has no jurisdiction. She further submitted that the Trial Court had erred in holding the case that has been made out by the Respondents that provisions of sub-clause 2 of rule 2 of order 14 was made out. She invited my attention to the impugned order which is passed by the Trial Court.

6. It is not possible to accept the submissions made by the

learned counsel for the Petitioners. The Trial Court passed a reasoned order and had observed that defendant No.1 and 2 had not alleged either the Petitioners or defendant No.3 and 5 are past members of defendant No.1-Bank. The Trial Court also observed that issue of maintainability of the suit is a mixed question of facts and law and other issues also similarly are mixed question of facts and law and therefore, it was appropriate to decide this question together. I do not see any infirmity in the said reasoned order. In fact, Civil Judge has already fixed the matter for hearing when the order was passed on 18/01/2003. Principle behind provisions of order 14 rule 2 is to avoid multiplicity of hearing of the proceedings at different stages. Very often in such case where witnesses which are examined by either party are common, there is no point in recording their evidence on the ground of question of maintainability and thereafter separately recording the evidence on other contentious issues, so that if the evidence is recorded in one stroke on both the issues and if the Court comes to the conclusion that suit is not maintainable, it can record findings on the other issues. However, on the contrary, if it comes to the conclusion that suit is maintainable then the entire suit itself would be decided in one stroke. Now the present petition is pending in the court since 2003. More than

4 years have passed. In the meantime, if this petition had not been filed then all the issues could have been decided on the basis of evidence of the parties. Obviously, this petition has been filed to delay the proceedings which are pending against the Bank. Under these circumstances, in my view, there is no reason to interfere with the order passed by the Trial Court. However, trial would be decided after recording evidence. Writ Petition is dismissed. All contentions of both the parties are kept open.

V.M. KANADE, J.